IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 6708/2005
(Vijay Saraswat Vs. State of Rajasthan & Ors.)

Date of Order : 17/01/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Rajesh Joshi for the petitioner.
Mr. Rameshwar Dave, Dy. Govt. Advocate for the respondents.

BY THE COURT:-

Reportable

By the instant writ petition under Articles 226 and 227 of the Constitution of India, the petitioner seeks to quash the orders impugned Annex.4 dated 3.9.2005, Annex.5 dated 13.9.2005 and Annex.7 dated 3.10.2005.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that the petitioner was initially appointed on the post of Teacher Gr.III vide order Annex.1 dated 24.3.1989, however, the petitioner was appointed as Senior Teacher (Mathematics) vide order Annex.2 dated 17.6.1992 and as such the petitioner is an employee of the respondent Education Department and his services are governed by the Rajasthan

Educational Subordinate Service Rules, 1971 (for short 'the Rules of 1971' hereinafter). During his service tenure, the petitioner was transferred to various places i.e. Government Secondary School Barwada, Udaipur (Rural) and Government Senior Secondary School Ambamata, Udaipur (Urban). The respondent No.4 by an advertisement Annex.3 dated 19.4.2005 published in Rajasthan Patrika, Udaipur Edition on 20.4.2005, advertised for appointment of Senior Teachers working in the Education Department in Residential School/ Ashram Chhatravas run by respondent No.4 namely Janjati Upyojna in Udaipur. A note was appended below the advertisement Annex.3 that the requisite qualification holders and those employees who are willing, may apply on a plain paper for the said purpose to the Project Officer, Tribal Area Development Department, Udaipur by 29.4.2005 at 10.30 A.M. The petitioner did not apply in pursuance of the said advertisement Annex.3. However, by order Annex.4 dated 3.9.2005, the respondent No.2 accorded sanction to post the petitioner from Government Senior Secondary School, Ambamata, Udaipur to Residential School, Kotda and in compliance of the order Annex.4, the petitioner was relieved from Govt. Senior Secondary School, Ambamata, Udaipur vide order Annex.5 dated 13.9.2005 to join at Residential School, Kotda under the scheme run by Tribal Area Development Department, Udaipur. This order came to be

challenged by the petitioner before Rajasthan Civil Services Appellate Tribunal, Jaipur (for short 'the appellate tribunal' hereinafter) by way of an appeal being Appeal No.1008/05. By order Annex.7 dated 3.10.2005, the appeal filed by the petitioner came to be dismissed by the appellate tribunal. Hence this writ petition.

The respondents have filed a reply to the writ petition stating therein that Rajasthan Janjatiya Kshetriya Vikas Vibhag is competent to send the employee on deputation in the residential or Aashram School. It has also been averred that the respondent No.3 has issued direction for relieving the petitioner and deputation of the petitioner at Residential School, Kotda has been made in the interest of administrative exigency. In whole of the reply, the respondents have not come with a case that before sending the petitioner on deputation to Residential School/ Aashram School run by Trible Area Development, Udaipur, the petitioner ever consented. Whereas, the petitioner specifically came with a case in para 5 and 6 of the writ petition that in pursuance of the advertisement Annex.3 he neither applied nor consented for deputation and therefore, the order sending the petitioner on deputation impugned is erroneous.

Learned counsel for the petitioner has relied on two decisions of Hon'ble Supreme Court in State of Punjab and Others Vs. Inder Singh and Others (1997) 8 SCC 372 and

Umapati Choudhary Vs. State of Bihar and Another (1999) 4 SCC 659.

In State of Punjab and Others Vs. Inder Singh and Others (supra) while considering the concept of "deputation", the Apex Court held as under :-

> "18. The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. <u>There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post.</u> The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no scope for the respondents now to go back to their parent departments and working there as Constables or Head Constable as the case may be."

In Umapati Choudhary Vs. State of Bihar and Another (supra) Hon'ble Supreme Court held as under :-

> "8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent

> department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled. The University, the present department or lending authority, the Board, the borrowing authority and the appellant, the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority. There is no material to show that the deputation of the appellant was not in public interest or it was vitiated by favouritism or mala fide. The learned Single Judge in the previous writ petition had neither quashed the deputation order nor issued any direction for its termination. Indeed the learned Single Judge had dismissed the writ petition. No material has been placed before us to show that between November 1987 when the judgment of the Single Judge was rendered and December 1991 when the Division Bench disposed of the writ petition filed by the appellant the petitioners of the previous case had raised any grievance or made any complaint regarding non-compliance with the directions made in the judgment of the learned Single Judge. In these circumstances the Division Bench was clearly in error in declining to grant relief to the appellant. Further, the appellant has, in the meantime, retired from service, and therefore, the decision in the case is relevant only for the purpose of calculating his retiral benefits."

In State of Punjab and Others Vs. Inder Singh and Others (supra) the Apex Court held that there can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation

post. In Umapati Choudhary Vs. State of Bihar and Another (supra) Hon'ble Supreme Court held that the concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. Thus, the ratio laid down by Hon'ble Supreme Court in both the decisions is that before sending an employee on deputation, the consent of such employee is sine-qua-non.

In the instant case, the advertisement Annex.3 also shows that the Senior Teacher Gr.II who are willing may apply for deputation which is in consonance with the law laid down by Hon'ble Supreme Court. However, since the petitioner did not apply in pursuance of the advertisement and therefore, it cannot be said that the petitioner consented to be sent on deputation and therefore, the order impugned Annex-4 dated 3.9.2005 and consequential order Annex.5 dated 13.9.2005 are against the provisions of law and cannot be sustained and liable to be set aside and the order Annex.7 dated 3.10.2005 passed by the appellate tribunal deserves to be set aside.

In the result, the writ petition is allowed. The order impugned Annex.4 dated 3.9.2005, order Annex.5 dated

13.9.2005 and order Annex.7 dated 3.10.2005 are quashed and set aside. Stay petition also stands disposed of. There shall be no order as to costs.

(H.R.PANWAR),J.

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